

No. 9(1)82-6Lab-332.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Municipal Committee, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 213 of 80

Between

SHRI RAM SUMER, WORKMAN AND THE MANAGEMENT OF MUNICIPAL
COMMITTEE, ROHTAK

Present:

Shri S. N. Vats for the workman.
Shri Ram Singh for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor, —*vide* his order No. ID/RTK/34-80/51167, dated 29th September, 1980 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Ram Sumer, workman and the management of Municipal Committee, Rohtak. The term of the reference was :—

“Whether the termination of services of Shri Ram Sumer was justified and in order ? If not, to what relief is he entitled ?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings and the only issue framed on the plea of the parties as under :—

Whether the termination of services of workman was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri Ram Singh, Octroi Superintendent as their only witness and closed their case. The workman examined himself as his witness and closed his case. I heard the learned representatives of the parties and decide issue as under.

The management witness stated that the workman was given duty as baildar w.e.f. 1st May, 1978 on daily wage basis after the abolition of the Improvement Trust. He was performing the duties of watering the trees along side the roads and parks and to take care of these. He worked upto 10th December, 1978 on daily wage basis thereafter absented himself from 11th December, 1978 and came back on duty on 19th January, 1979 and worked upto 19th July, 1979 and then again left the service for two three days in the months of July and August and again worked from 7th September, 1979 to 30th September, 1979. He further stated that the workman was not given duty on 1st October, 1979 onwards for shortage of funds and also the work for which he was engaged came to a close. The witness gave out in his cross-examination that the baildars working on the parks were definitely taken in service by the Municipal Committee from the Improvement Trusts when the Improvement Trust was abolished. He further stated in his cross-examination that he did not know whether Shri Ram Sumer was employed in July, 1975 by the Improvement Trust. He further gave out that the figures given in his examination in chief were collected from the wage register and the musteroll but he had not brought the same that day. The workman was removed from service as there was no work left with the Municipal Committee. He admitted that no notice, notice pay in lieu thereof or any retrenchment compensation was paid to the workman as he was not their employee. He denied as wrong that the workman was on monthly wage basis and it was also wrong that his attendance was marked in the attendance register.

The workman deposed that he was appointed as Mali in the Improvement Trust on 22nd July, 1975 and he was transferred to Municipal Committee Rohtak from the Improvement Trust on 28th May, 1978. The Municipal Committee took over all the liabilities and assets from the Improvement Trust alongwith all the employees of the trust. He was getting Rs. 210 per month as his wages and he was not paid any notice, notice pay or service compensation at the time of his termination. The workman denied as wrong that he attended his duties at his pleasure in fact he worked continuously for four years and he did not absent himself from 11th December, 1978 to 18th January, 1979. He further stated that the certificate Ex. WW-1/1 was given by Shri Hari Ram Gupta and not Goel who was Engineer in the Improvement Trust.

The management has laid a great stress on the fact that the workman was engaged on daily wage basis as and when the exigency of the work demanded and the workman was not appointed on regular or permanent

basis. It has also been contended on behalf of the management that the workman attended his duties and absented from duties as and when he so pleased and the management allowed him duty on the availability of funds and work. The management did not substantiate their case with the help of the record which was in their possession. It seems that the management withheld the record knowing it fully well that if produced the same would have gone against them. I am therefore not to draw an adverse inference that from the attendance and the wage record it would have been established that the workman was not working on daily wage basis and also he has not remained absent on the days which have been given by the management witness in his statement. If it had not been so the management would have certainly produced the record in support of their contention. The management witness has also stated that the employees of the Improvement Trust were surely taken by the Municipal Committee and there is no evidence that the employees were given fresh employment. The presumption, in the absence of any such evidence, is that the workman was taken on duty on his old terms and conditions of service. From Ex. WW-1/1 the version of the workman is proved that he worked as baildar in the Improvement Trust from July, 1975 to May, 1978 and thereafter transferred to Municipal Committee along with the colony in which he was working. Even if his service with the Improvement Trust is not counted he has put in more than 240 days of service with the respondent. The termination of the workman, without serving him with any notice or without paying notice pay in lieu thereof or the retrenchment compensation, the facts which have been admitted by the management witness, is violative of mandatory provisions of section 25 F(a) and 25F(b). The order of termination becomes void ab initio and the same is therefore neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full backwages. The reference is answered and returned accordingly.

The 31st December, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst No. 10, dated 4th February, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9 (1) 82-6Lab/241.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Executive Engineer, P.W.D. (B & R), Haryana Construction Division, Tosham.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 98 of 79

Between

SHRI HUKAM CHAND, WORKMAN AND THE MANAGEMENT OF EXECUTIVE
ENGINEER, P.W.D. (B & R), HARYANA, CONSTRUCTION DIVISION, TOSHAM

Present :

Shri Sagar Ram Gupta for the workman.
Shri Mangal Ram for the management.

AWARD

This reference has been referred to this court by Hon'ble Governor, vide his order No. ID/HSR/9279/18597, dated 4th May, 1979, under section 10(i) (c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Hukam Chand, workman and the management of Executive Engineer, P.W.D. (B & R) Haryana Construction Division, Tosham. The term of the reference was :—

Whether the termination of services of Shri Hukam Chand was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings, issues as under were framed on the basis of the pleas of the parties :—

Whether the departmental enquiry before terminating the services of the workman was in accordance with the principles of natural justice, CSR and fair.

2. Whether the termination of the services of the workman was justified and in order ? If not, to what relief he is entitled ?

The management examined Shri S.N. Tandon and Shri Prem Chand as their witnesses and their case was closed on 16th April, 1980. The workman examined himself as his witness and closed his case. I heard the learned representatives of the parties and decide the issues as under :—

Issue No. 1 :—

The management has pleaded in their written statement that the workman was employed as work-charged mate and his services were terminated,—vide order dated 5th January, 1975. The workman was not suspended. His services were terminated as a result of departmental enquiry on charges of theft. The management has not produced in the witness box the Enquiry Officer. MW-1 has stated that his predecessor got the enquiry conducted. Enquiry proceedings were Ex. MW-1/6 consisting of 14 pages.

The workman has deposed that he was not given any charge-sheet nor any enquiry was held. The statements of any person were not recorded in his presence nor he was allowed to cross-examine nor he was given the opportunity of producing his defence. The alleged enquiry proceedings consist of the statements of different persons involved in the theft case alongwith the statement of Shri Tara Chand, Tractor owner. From these statements no conclusion can be arrived as to the workman being proved guilty. Even his involvement in the theft has not been established. The tractor Driver has named four persons and two other persons he could not name and with regard to the workman Hukam Chand he has only stated that he heard the other employees accompanying him saying that Hukam Chand had not come. I have not come across any evidence from the side of the management by which it can be inferred that such and such person was appointed as Enquiry Officer to hold the enquiry nor there has been placed on file any letter intimating the workman for appearing before the Enquiry Officer nor it appear from the alleged enquiry proceedings Ex. MW-1/6 that these are the papers regarding the enquiry against the workman on charges of alleged theft. I am therefore of the opinion that no enquiry has been conducted against the workman and if any has been conducted the same is not in accordance with the principles of natural justice or C.S.R. and the same is not fair. The issue is accordingly decided against the management.

Issue No. 2 :—

MW-1 has stated that services of the workman were terminated,—vide Ex. MW-1/4 which bear his signatures. There was reference in Ex. MW-1/4 of letter Ex. MW-1/C. MW-1 has further given out that Ex. MW-1/D reveals that an F.I.R. was lodged with the police against this workman for the offence of theft but he was not aware that the workman was acquitted,—vide Ex. W-I. He has further given out that he terminated the services of the workman on account of his involvement in the theft case and also on his remaining absent for more than a year. MW-2 has stated that the applicant remained absent from 25th September, 1973 to 25th July, 1974 and onwards. The workman applied for leave with effect from 25th September, 1973 without pay on 25th July, 1974. The leave application in original is Ex. MW-2/1. On this application there are remarks beneath it of the S.D.E. that as per enquiry conducted by him the name of the workman had been included in the theft case on the hearsay evidence of the tractor owner and he thought that he was not involved in the theft case and as such it was recommended that he should be reinstated and the leave applied for by him without pay was also recommended. From the remarks which is an admitted document it is clear that neither the workman was involved in the theft case nor he can be deemed to be absent as the leave applied for by him was duly recommended by his immediate officer. The workman has been in continuous service from 1967 to the date of his termination for a period of more than seven years. The termination of the workman without a proper valid enquiry is illegal and unjustified. Moreover the workman has been acquitted of his charges by the criminal court,—vide order Ex. W-1. The management has failed to establish the charges levelled against the workman even before me. The workman is therefore entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated 18th December, 1981.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 4494, dated 30th December, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Indian Dispute Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.